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CHARLES ELMORE

No. 33

In the Supreme Court of the United States

OCTOBER TERM, 1941

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

ON WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The order of the Circuit Court of Phelps County (R. 2–3) was entered without an opinion. The opinion of the Springfield Court of Appeals (R. 30–40) and its opinion on motion for rehearing (R. 49–52) are reported in 143 S. W. (2d) 318.

JURISDICTION

The judgment of the Springfield Court of Appeals was entered August 22, 1940 (R. 29–30). A motion for rehearing was overruled on September

18, 1940 (R. 49). A petition for a writ of certiorari to the Supreme Court of Missouri was denied December 3, 1940 (R. 52). The petition for a writ of certiorari to this Court was filed March 1, 1941, and was granted April 7, 1941. The jurisdiction of this Court rests upon section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether section 3466 of the Revised Statutes has been modified by section 64a of the Bankruptcy Act so as to entitle wage claims, accorded priority by state statute, to take precedence in payment over a debt due the United States in an equity receivership proceeding in a state court.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 31–34.

STATEMENT

The case was tried upon a stipulation of facts (R. 23–24), the material parts of which are as follows:

The St. James Distillery became hopelessly insolvent on or before August 1936 (R. 23). On August 27, 1936, a petition (R. 10–14) was filed in the Circuit Court of Phelps County, Missouri, asking that a receiver be appointed to liquidate its assets, and on September 9, 1936, W. D. Jones was duly appointed receiver (R. 23). The assets

which came into the hands of the receiver amounted to $1,000 (R. 24). After payment of certain expenses of the receivership, there remained for distribution the sum of about $678.00 (R. 24).

Among the claims filed with the receiver were those of approximately 12 individuals totaling about $900.00 (R. 24). These claimants had performed common labor for the insolvent corporation and claimed preference in payment under the provisions of section 1168 of the Revised Statutes of Missouri, which granted priority in payment to labor claims where the individual amount did not exceed $100.00 (R. 24).

On September 23, 1935, the St. James Distillery had executed a note in the amount of $7,481.78, payable to the Industrial Bank and Trust Company of St. Louis (R. 24). The St. James Distillery defaulted in payments, and, on July 14, 1936, the note was indorsed and delivered to the Federal Housing Administrator, acting for and on behalf of the United States, and the United States, under its contract of insurance, paid the Industrial Bank and Trust Company the sum of $5,988.88, the balance due on the note (R. 24). The United States filed a claim with the receiver for payment of this amount, with interest thereon from July 14, 1936 (R. 24). Priority was claimed under the provisions of section 3466 of the Revised Statutes (R. 24).

The Circuit Court of Phelps County denied the claim of the United States to priority, allowed it

as a general claim only, and held that the labor claims were entitled to preference in payment by virtue of the Missouri statute (R. 2–3, 6–7). An appeal was taken by the United States to the Supreme Court of Missouri, and was by that court transferred to the Springfield Court of Appeals (R. 4). The Springfield Court of Appeals affirmed the order of the Circuit Court of Phelps County, holding that while the Circuit Court had committed error in failing to hold that the United States was a preferred creditor, such error was harmless inasmuch as the labor claims took precedence over the claim of the United States, and more than absorbed the assets remaining (R. 30–40). The court held that the claim of the United States was entitled to such priority as is accorded other claims of the Government under Revised Statutes, section 3466 (R. 33). It further held, however, that section 3466 was limited in application by the provisions of section 64a of the Bankruptcy Act, which subordinates claims of the United States to those of wage earners (R. 34–37). A rehearing was denied (R. 49–52), and a petition for a writ of certiorari was denied by the Supreme Court of Missouri on December 3, 1940 (R. 52).

SPECIFICATION OF ERRORS TO BE URGED

The Springfield Court of Appeals of Missouri erred:

1. In holding that in a state insolvency proceeding labor claims are entitled to priority over a debt due the United States.

2. In holding that wage claims entitled to priority under section 64a of the National Bankruptcy Act are entitled to the same priority in nonbankruptcy proceedings, notwithstanding the provisions of section 3466 of the Revised Statutes.

3. In holding that section 3466 of the Revised Statutes should be construed so as to permit prior payment of labor claims.

4. In holding that a state statute providing for priority of payment of wage claims in a state insolvency proceeding is not in conflict with section 3466 of the Revised Statutes.

5. In failing to hold that state statutes providing for priority of payment are wholly inapplicable to a claim of the United States under section 3466 of the Revised Statutes.

6. In failing to hold that the United States was entitled to priority in payment.

7. In affirming the judgment of the Circuit Court of Phelps County.

SUMMARY OF ARGUMENT

Upon assignment to the Federal Housing Administrator, acting on behalf of the United States, the claim in controversy became that of the United States and was entitled to such priority as is accorded any claim of the United States under section 3466 of the Revised Statutes. The court below so held. The court erred, however, in concluding that the priority granted by section 3466 of the Revised Statutes is limited in nonbankruptcy proceedings to that provided by the

Bankruptcy Act, and that wage claims are therefore entitled to priority over those of the United States in conformity with the provisions of section 64a of the Bankruptcy Act.

Section 3466 of the Revised Statutes directs the prior payment of all debts owing to the United States. Section 64a of the Bankruptcy Act grants a limited priority to wage claims over all unsecured claims of the United States and the states places nonlien tax claims of the United States and the states on a parity, and accords the latter priority over unsecured claims of the United States other than for taxes. Section 64a, however, has no application in terms to proceedings other than bankruptcy, and in all other insolvency proceedings claims of the United States, whether for taxes or otherwise, have been held entitled to priority over unsecured claims of wage earners and the states. This distinction has been consistently recognized and enforced by this Court and by the state and lower federal courts, and has always been acted upon by the Government.

2. There is no occasion now to announce a different rule. The failure of Congress to modify expressly section 3466 in conformity with section 64a of the Bankruptcy Act was not inadvertent. In legislating on the subject of priorities in the Bankruptcy Act of 1898, Congress was undoubtedly aware of the general priority granted by section 3466, and could not have intended by mere implication to modify in nonbankruptcy proceedings a

rule of a hundred years' standing. The nature of the priority provisions of the Bankruptcy Act confirms this view. The fact that they deal with all claims, those of the states and individuals, as well as those of the United States, forcibly suggests that they were intended to apply only to such proceedings as are completely regulated by the Bankruptcy Act. That act certainly has no general application to insolvency proceedings in the state courts and an intention to give it piecemeal effect in such proceedings cannot reasonably be implied. The results which would follow from enforcing section 64a in such manner forbids a contrary conclusion.

ARGUMENT

THE PRIORITY ACCORDED CLAIMS OF THE UNITED STATES BY REVISED STATUTES, SECTION 3466, IS NOT LIMITED IN APPLICATION BY THE PROVISIONS OF THE BANKRUPTCY ACT SAVE IN PROCEEDINGS UNDER THAT ACT

The court below held that claims of the United States acquired under the National Housing Act prior to the appointment of a receiver are entitled to such priority as is accorded other claims of the United States under Revised Statutes, section 3466. The decision in this aspect is in accord with the uniform ruling of other courts,[1] and is plainly cor-

[1] *In re Dickson's Estate*, 197 Wash. 145; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); cf. *In re Hansen Bakeries, Inc.*, 103 F. (2d) 665, 666 (C. C. A. 3d); *In re Miller*, 105 F. (2d) 926, 927-928 (C. C. A. 2d); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530, 531 (N. D. Tex.).

rect.[2] The court further held, however, that all claims of the United States are subordinate to those of wage earners. The Court expressly recognized that the states are without power to estab-

[2] Upon assignment to the Federal Housing Administrator acting on behalf of the United States, the claim became that of the United States and the United States became entitled to enforce it. *United States* v. *Summerlin*, 310 U. S. 414, 416. Save as limited by the provisions of other statutes (*Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238–239; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478), section 3466 extends to all claims of the United States, including those founded on negotiable instruments, or commercial transactions. *United States* v. *Fisher*, 2 Cranch 358; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; cf. *United States* v. *Summerlin*, 310 U. S. at 416–417. There is nothing in the National Housing Act evidencing an intention to withhold priority from claims acquired thereunder. The Act contains no separate and independent provisions for the securing of such claims. Cf. *Cook County National Bank* v. *United States*, 107 U. S. 445, 449; *United States* v. *Guaranty Trust Co.*, 280 U. S. at 485. The granting of priority would not defeat the purpose of the Act to encourage private persons to advance funds for housing improvements and construction. Cf. *United States* v. *Guaranty Trust*, 280 U. S. at 484. The Act authorizes the Administrator to insure loans of financial institutions up to an amount substantially in excess of probable losses, and the contractors, material men and laborers, receive payment in cash out of the insured loans and are not required to look to the credit of the house owners for compensation. See Brief in Opposition, *City of New York* v. *United States*, No. 707, October Term 1940. Nor is there any provision in the Act subjecting the Administrator to the same law which governs private persons engaged in similar activities. Cf. *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236. As the court below concluded, any limitation of the priority granted by section 3466 must therefore be found, if at all, in the Bankruptcy Act.

lish a priority in conflict with that prescribed by section 3466 (cf. *Field* v. *United States*, 9 Pet. 182, 201; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80, 90). But it concluded that that section should be applied in nonbankruptcy proceedings in conformity with the policy embodied in section 64a of the Bankruptcy Act, which gives a limited priority to wage claims over those of the United States, and that, subject to the limitations as to time and amount prescribed by the Bankruptcy Act, the priority accorded wage claims by the Missouri statute is valid. While the decision is limited to wage claims, the principle on which it proceeds is one of broad application and would extend equally to any other claim which is placed on a parity with or accorded priority over those of the United States under the Bankrutcy Act. The decision, we submit, disregards settled principles and is plainly incorrect.

Section 3466, expressly declares that "debts due to the United States shall be first satisfied" out of the estate of the insolvent debtor. The statute is to be "liberally construed" to secure the public revenues (*Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 487; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134) and those who seek to defeat the priority of the United States have the burden of showing that the Act is inapplicable. *Beaston* v. *Farmers' Bank*, *supra*; *Bram-*

well v. *United States Fidelity & Guaranty Co.*, *supra*.

Under any permissible canon of construction, however, section 64a of the Bankruptcy Act affords no basis for a limitation of the priority of the United States in nonbankruptcy proceedings. Section 64a[3] provides that wage claims, not exceeding $600, earned within three months of the commencement of the bankruptcy proceedings, are entitled to priority over unsecured claims of the United States and the states for taxes; nonlien tax claims of the United States and the states are placed on a parity; and the latter are entitled to priority over unsecured claims of the United States other than for taxes. Section 64a, however, extends in terms only to proceedings under the Bankruptcy Act, and in all other insolvency proceedings it has heretofore been the settled rule that, under section 3466, claims of the United States, whether for taxes or other debts owing to the Government, are entitled to priority over unsecured claims of wage earners and the states. *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *Piedmont Cor-*

[3] The priority provisions of paragraphs (a) and (b) of section 64 of the Bankruptcy Act of 1898 and amendatory acts were included with amendments in 64a by the Act of June 22, 1938, 52 Stat. 840, 874.

poration v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525 (N. D. Ga.); *City of New York* v. *United States*, 284 N. Y. 713, certiorari denied, 312 U. S. 696; *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; see *Rogge*, The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships, 43 Harv. L. Rev. 251.[1]

This Court has expressly recognized that the order of priority established by section 64a of the Bankruptcy Act has no application outside of

[1] In bankruptcy proceedings, a claim for a penalty is not allowable save for the amount of the pecuniary loss (Sec. 57j of the Bankruptcy Act: *United States* v. *Birmingham Trust & Sav. Co.*, 258 Fed. 562, 564 (C. C. A. 5th), certiorari denied, 251 U. S. 550); and claims of the United States, whether for taxes or otherwise, are subordinate to those of the states or individuals secured by general liens under section 67f (*United States F. & G. Co.* v. *Sweeney*, 80 F. (2d) 235 (C. C. A. 8th); *Claude D. Reese, Inc.*, v. *United States*, 75 F. (2d) 9 (C. C. A. 5th); *In re Caswell Constr. Co.*, 13 F. (2d) 667 (N. D. N. Y.)). In other insolvency proceedings, however, it has been held that the priority of the United States can be defeated only by a specific lien (*United States* v. *Knott*, 298 U. S. 544; *New York* v. *Maclay*, 288 U. S. 290) and that a penalty is a "debt" within the application of Revised Statutes, section 3466 (*Spokane County* v. *United States*, 279 U. S. 80; *In re Assignment for Benefit of Creditors of T. J. Simpson, Inc.*, 15 N. Y. S. (2d) 1021).

The court below did not and could not purport to hold that Mo. Rev. Stat. 1929 (sec. 1168), gave wage claims a specific lien on the debtor's property. The statute merely gives laborers a preference, subordinate to holders of specific liens. *Fitzgerald* v. *Meyer*, 65 Mo. App. 665; *Cunningham* v. *Mining Co.*, 103 Mo. App. 398, 76 S. W. 487.

bankruptcy proceedings. In *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, the Court held that by virtue of section 10 of the Act of March 21, 1918, providing that carriers under federal control should be subject to "all laws and liabilities as common carriers," the Director General of Railroads was not entitled to any preference or priority not accorded private carriers. The Court recognized, however, that debts owing to the United States were entitled to priority under Revised Statutes, section 3466, in equity receivership, although not accorded such priority under the Bankruptcy Act as it then stood, and it was in this view that the Court found it necessary to determine the effect of section 10. The Court said (pp. 238–239):

> Under *Davis* v. *Pringle*, 268 U. S. 315, if the estate of the Rathbone Manufacturing Company were being administered under the Bankruptcy Act the claims of the Director General would not be entitled to preference. It is also plain, under *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483; *Price* v. *United States*, *id.* 492; and *United States* v. *Butterworth-Judson Corporation*, *supra*, that in proceedings like the present one, debts due directly to the United States, nothing else appearing, are ordinarily entitled to priority under R. S., § 3466. Decision of this

> cause, therefore, must turn upon the effect to be given § 10, Act of 1918, *supra*.[5]

In *Spokane County* v. *United States*, 279 U. S. 80, the Court held that a tax claim of the United States was entitled to priority over a state tax claim in a nonbankruptcy proceeding under section 3466, although the court was clearly aware that such claims were placed on a parity in bankruptcy proceedings. After concluding that Congress had constitutional power to establish such priority the Court said (p. 93):

> There remains only to determine what priority it [Congress] has conferred. It may withhold it or vary it, and it has sometimes done so. * * *

The reference in the opinion to the instances in which Congress had varied the priority of the United States could only have reference to the familiar one of the Bankruptcy Act.[6]

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[5] In the *Davis* case (*Davis* v. *Pringle*, 268 U. S. 315) this Court had held that the United States was not a "person" within the meaning of section 64 (b) (5) of the Bankruptcy Act of 1898 as originally enacted, which accorded a limited priority to "debts owing to any person who by the laws of the states or the United States is entitled to priority," and that accordingly the United States was not entitled to any priority other than that expressly granted for taxes under the then section 64 (a).

[6] In *Cook County Nat. Bank* v. *United States*, 107 U. S. 445, the court held that R. S. sec. 3466 was inapplicable to an insolvent national bank since the provisions of the act

The state and lower federal courts have similarly adverted to the established distinction between the order of priority in bankruptcy and in other insolvency proceedings. See, e. g., *Claude D. Reese, Inc.*, v. *United States*, 75 F. (2d) 9 (C. C. A. 5th); *Liberty Mutual Ins. Co.* v. *Johnson Shipyards Corp.*, 6 F. (2d) 752 (C. C. A. 2d), aff'd *sub nom. Stripe* v. *United States*, 269 U. S. 503; *Clough* v. *Superior Equipment Co.*, 157 Atl. 306 (Del.); *Matter of Lincoln Chair & Novelty Co.*, 274 N. Y. 353, 359; cf. *Carpenter* v. *Wabash Ry. Co.*, 103 F. (2d) 996, 1000 (C. C. A. 8th), reversed on other grounds, 309 U. S. 23. Accordingly, prior to the instant decision, these courts have uniformly rejected any contention that the priority accorded by Revised Statutes, section 3466, is qualified by the Bankruptcy Act. *Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525 (N. D., Ga.); *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; *In re Assignment for Benefit of Cred-*

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authorizing the formation of national banks were inconsistent with the granting of priority to the United States. The court rejected the contention that the subsequent enactment of the Bankruptcy Act of 1867, granting the United States a priority similar to that accorded by R. S. sec. 3466, required a different result. The court said (pp. 451–452): "This view of the banking law is not affected by the subsequent enactment in 1867 of the Bankruptcy Act, giving priority to the demands of the United States against the estates of bankrupts. That enactment was dealing with the estates of persons adjudged to be insolvent under that law, and covers only the distribution of their estates. It has no further reach."

itors of T. J. Simpson, Inc., 15 N. Y. S. (2d) 1021. The cases in which such contention has been advanced are significantly few, undoubtedly reflecting the general assumption that section 64a of the Bankruptcy Act has no application outside of bankruptcy proceedings. See *Rogge*, The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships, 43 Harv. L. Rev. 251.

Indeed, the limitation of section 64a to bankruptcy proceedings has apparently been regarded by this Court as so well established as ordinarily not to require special mention. It was clearly assumed, however, in *Price* v. *United States*, 269 U. S. 492, and *Stripe* v. *United States*, 269 U. S. 503, holding that taxes are "debts" within the meaning of Revised Statutes, section 3466, and that a tax claim of the United States was therefore entitled to priority. There was no necessity of deciding this question if the Bankruptcy Act, which expressly grants priority to federal and state tax claims, had been deemed to control the measure of the United States' priority in non-bankruptcy proceedings. The circuit court of appeals expressly recognized as much in one of these cases. See *Liberty Mutual Ins. Co.* v. *Johnson Shipyards Corp.*, 6 F. (2d) 752, 753 (C. C. A. 2d).[7]

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[7] This Court subsequently declared it "plain" that under the *Price* and other decisions the United States was entitled to priority in an equity receivership, notwithstanding the denial of such priority under the Bankruptcy Act. See *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238–239.

And the decision in *Gurantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, in which this Court held that in bankruptcy proceedings, nontax claims of the United States are subordinate to wage claims, was premised on the assumption that Revised Statutes, section 3466, would have required a different result in any other insolvency proceeding, the question presented being whether the United States was bound by the Bankruptcy Act or could, in disregard thereof, enforce the priority accorded by section 3466.

The state and lower federal courts have made the same assumption in according priority to claims of the United States in nonbankruptcy proceedings without any mention of section 64a. *People of New York* v. *United States*, 106 F. (2d) 210 (C. C. A. 3d); *United States* v. *Bliss*, 40 F. (2d) 935 (D. Neb.); *Hammond* v. *Carthage Sulphite Pulp & Paper Co.*, 34 F. (2d) 155 (N. D. N. Y.); *United States* v. *Porter*, 24 F. (2d) 139 (D. Idaho); *Stover* v. *Scotch Hills Coal Co.*, 4 F. (2d) 748 (W. D. Pa.); *United States* v. *San Juan County*, 280 Fed. 120 (W. D. Wash.); *Gerson, Beesley & Hampton* v. *Shubert Theatre Corp.*, 7 F. Supp. 399 (S. D. N. Y.); *West Coast Power Co.* v. *Southern Kansas Gas Co.*, 20 Del. Ch. 130; *Tropical Printing Co.* v. *Union Title Guarantee Co.*, 180 La. 702; *Parks* v. *Central Door & Lumber Co.*, 102 P. (2d) 706 (Ore. 1940); *Bowes* v. *United States*, 127 N. J. Eq. 132; *Decker* v. *Decker Bldg. Material Co.*, 118 N. J. Eq. 177.

As may be gathered from the decisions cited, the Government in practice has consistently acted upon the view that the priority accorded by section 3466 of the Revised Statutes is not limited in any way by the Bankruptcy Act in nonbankruptcy proceedings. A practice "so long and so general" should not now be disturbed even if its legality were doubtful. *United States* v. *Bank of North Carolina*, 6 Pet. 29, 39–40; *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524–525.

The conclusion reached by the court below is thus novel and unprecedented. None of the cases which the court cited furnish the slightest support. As shown above, *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, is to the contrary, and supports the Government's position. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, is not in point. In that case, this Court held that section 3466 was inapplicable to claims of the United States arising under Title II of the Transportation Act of 1920 which authorized loans to railroads and made specific provision for security. The Court concluded that to grant priority to such claims would impair the credit of the railroads and thus defeat the purpose of the Transportation Act and that the express inclusion by Congress of the provision for security clearly manifested a purpose not to rely on the priority provided by section 3466. As the court below itself expressly recognized, however, claims of the United States acquired under the National

Housing Act are entitled to the same priority accorded other claims of the United States under section 3466. In *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 490, the Court merely held that a resolution of the board of directors of an insolvent bank giving control and possession of the bank's assets to a state superintendent of banks for purposes of liquidation was "an act of bankruptcy" or "voluntary assignment" within the meaning of section 3466, even though the bank was not subject to the Bankruptcy Act. The language in the opinion (269 U. S. at 490) that the application of section 3466 was not intended to depend on whether the debtor was one to whom the Bankruptcy Act applied contains no suggestion that the priority of the United States is the same whether the proceeding is in bankruptcy or otherwise. The case was subsequently cited by this Court for the contrary conclusion. See *Mellon* v. *Michigan Trust Co.*, 271 U. S., at 238–239.[8]

2. There is no occasion to overturn this settled practice and course of decision. The failure of Congress to amend section 3466 to conform with the priority provisions of the Bankruptcy Act

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[8] The statement in *United States* v. *Marxen*, 307 U. S. 200, 206, that the generality of Revised Statutes, section 3466, is restricted by legislative intent, as disclosed by the statutes had reference to a very limited class of cases, as appears from the citation of the *Mellon* and *Guaranty Trust Co.* cases.

was not inadvertent. In each of the Bankruptcy Acts prior to the Act of July 1, 1898, Congress had expressly reaffirmed the general priority of the United States (Act of April 4, 1800, section 62, 2 Stat. 19, 36; Act of August 19, 1841, section 5, 5 Stat. 440, 444; Act of March 2, 1867, section 28, 14 Stat. 517, 536); and could not have been unmindful of the general provisions of section 3466 when it legislated on the subject of priorities in the Bankruptcy Act of 1898. And it is inconceivable that when Congress modified the theretofore prevailing rule with respect to priority in an act purporting to be limited to bankruptcy proceedings, it intended to repeal by mere implication a familiar rule of one hundred years' standing in all other insolvency proceedings.[9] The nature of the Bankruptcy Act confirms this view. As this Court observed in *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 160, "The act takes into consideration * * * the whole range of indebtedness of the bankrupt, national, state and individual, and assigns the order of payment." As section 64a thus deals with the relation of claims of the United States to all other claims in bankruptcy, the plain inference is that it was enacted

[9] There is nothing in the legislative history of the Bankruptcy Act of 1898 which sheds light on the intention of Congress in this respect. See H. Rpt. No. 65, 55th Cong., 1st Sess., p. 27.

with exclusive reference to bankruptcy proceedings in which all claims are subject to the detailed regulations of the Bankruptcy Act.[10]

Moreover, the difficulties involved in enforcing, in state proceedings, the priority of wage claims over the claims of the United States in accordance with the "policy"[11] set forth in section 64a apart from the other provisions of the section, forcibly suggest that such a piecemeal transposition of the Bankruptcy Act was not intended. It is true that there is no difficulty in cases where the state statutes also accord wage claims first priority after the payment of expenses of administration. Only-

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[10] Congress may well have the power to make like provision in respect to insolvency proceedings in state courts, since the subject of bankruptcies is nothing less than "the subject of the relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his or their relief" (*In re Reiman*, Fed. Cas. No. 11,673; *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 672-673) and state courts are under a duty to enforce federal enactments no less than the courts of the Union. *United States* v. *Bank of New York Co.*, 296 U. S. 463, 479. But section 64a was obviously not intended to supersede entirely the priority provisions of state insolvency laws in nonbankruptcy proceedings.

[11] Section 64a also reflects the "policy" that Government tax claims be on a parity with the tax claims of the states, and that other unsecured claims of the Government be inferior to state tax claims. Nevertheless this Court, in according priority to Government claims in state proceedings, did not extend the order of priority of 64a to state proceedings. *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 291.

a few states, however, accord wage claims such a position of preference.[12] Most states give first priority to state tax claims, wage claims being sometimes accorded a limited priority over other claims and sometimes no priority at all.[13] The state statutes, it may be observed, contained substantially the same provisions at the time the

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[12] See Stats. of Ark (Pope, 1937), secs. 97, 7610; Ill. Rev. Stat. (Smith-Hurd 1935), c. 3, sec. 70; Ind. State Ann. (Burns, 1933), sec. 40-111; Gen. Stats. of Kans. (1935), secs. 44-312; Rev. Stats. Mo. (1939), secs. 1332, 3542; Penna. Stat. Ann. (Purdon 1930) tit. 20 sec. 501, tit. 39, sec. 165, tit. 43 secs. 223, 224; Rev. Stat. of Utah Ann. (1933), secs. 49-7-1, 102-9-22; Wash. Code (Pierce 1929), secs. 9803, 9734; Wyo. Comp. Stat. (1920), secs. 4158, 6869.

[13] Code of Ala. (1923), secs. 5822, 5994; Rev. Code of Del. (1935), sec. 3351; Compiled Gen. Laws of Fla. (1927), sec. 1348; Ga. Code Ann. (1936) secs. 67-1801, 67-1802, 92-5707; Idaho Code Ann. (1932), secs. 61-102, 61-104; Ind. Stat. Ann. (Burns, 1933), secs. 6-1301, 64-2001; Code of Iowa (1939), secs. 12731, 12732; Gen. Stat. of Kans. Ann. (1935) sec. 22-701 (*Schmitz* v. *Schmitz*, 124 Kans. 546); Carroll's Ky. Stat. (Baldwin, rev. ed. 1930), sec. 4021; La. Gen. Stat. Ann. (Dart, 1939), sec. 8435; Ann. Code of Md. (1935 Supp.), art. 47, sec. 15; 1 Miss. Code Ann. (1930), sec. 3120; Rev. Code of Mont. Ann. (1935), secs. 2152, 2153, 2154; Neb. Comp. Stat. (1929), secs. 6-124, 77-204, 77-206; Rev. Stat. of N. J. (1937), sec. 54: 49-1; N. Mex. Stat. Ann. (1915), secs. 2283, 2284; N. C. Code Ann. (1939), secs. 1618, 7971 (213); Okla. Laws, 1927, c. 106, sec. 1; Ore. Code Ann. (1935 Supp.), sec. 69-722; Ore. Code Ann. (1930), sec. 69-722; Gen. Laws of R. I. (1938), c. 36, sec. 3, c. 578, sec. 33; S. D. Code (1939), sec. 57.108; Code of S. C. (1932), secs. 2571, 8376, 8782; Tex. Civil Stat. (1938), art. 7269; Rev. Stats. of Utah Ann. (1933), sec. 5-0-9; Public Laws of Vt. (1933), sec. 2926.

Bankruptcy Act of 1898 was enacted.[14] In these cases, anomalous situations are presented. The tax claims of the United States are by the Bankruptcy Act inferior to the wage claims, but on a parity with or superior to state claims, which, in turn, are superior, under state law, to the wage claims. The subordination of the claims of the United States, in contrast to the claims of the states, to wage claims would obviously defeat the "policy" reflected in the Bankruptcy Act. Congress could not have intended that the Government forego its priority in favor of labor claims, only to have a state claim, which would otherwise be entitled only to parity with like claims of the United States, raised to first rank. Cf. *Ferris* v.

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[14] *Wages first:* Ark. Dig. Stat. (Sandels & Hill 1894), sec. 110; Ill. Rev. Stat. (1895), c. 146 (a), sec. 11; Ind. Laws (Spec. Sess. 1885), c. 3, sec. 1; Mo. Rev. Stat. (1889), secs. 2538, 6761; Ore. Code & General Laws Ann. (Hill 1892), p. 1902; Utah. Rev. Stat. (1898), secs. 1344, 3689, 3670; Wash. Codes & Stat. Ann. (Bollinger 1897), secs. 6333, 5981, 5982; Wyo. Laws (1891), c. 17, sec. 21.

Taxes or other state claims prior to wages: Ala. Code (1896) secs. 4116, 126; Del. Laws (1891–1893), c. 556; Fla. Rev. Stat. (1892), secs. 410, 1909, 1945; Ind. Laws (Spec. Sess. 1881), c. 49, sec. 152; Ia. Code Ann. (1897), sec. 3078; Kans. Gen. Stat. (1897), c. 107, sec. 80, c. 158, sec. 138; Ky. Stat. (1894), secs. 3868, 3869, 4021; Acts of La. (1898), No. 170, sec. 49; Md. Pub. General Laws (1888), art. 47, sec. 15; Miss. Code Ann. (1892), sec. 3746; Mont. Pol. Code (1895), secs. 3827, 3829; Neb. Comp. Stat. (1895), sec. 565; N. J. General Stat. (1789–1895), p. 3350; N. C. Code (1883), c. 55, sec. 3682; Rev. Stat. Ohio (1890), sec. 6355; S. C. Acts (1897), No. 316, p. 502; Texas Civil Stat. (1887), secs. 2037, 4690; Vt. Stat. (1894), sec. 2503.

Chic-Mint Gum Co., 14 Del. Ch. 232; *American Type Founders Co.* v. *Nichols*, 110 Tex. 4, 8; see also *Spokane County* v. *United States*, 279 U. S. 80. The congressional purpose would likewise be defeated if an amount equal to the claim superior to that of the United States under section 64a were set aside for the satisfaction of the claim preferred by state law. Such a solution could be adopted by Congress (see *Rogge*, *supra*, p. 277) but no such intention can be inferred from section 64a.[15] None of the various theories suggested

[15] A similar problem may arise in cases where the state statute gives priority to state tax claims over private claims secured by specific liens or mortgages. (See, e. g., 1 Miss. Code. Ann. (1930), sec. 3120; Rev. Code of Mont. Ann. (1935), secs. 2152, 2153; Neb. Comp. Stat. (1929), secs. 77–206, 6–124; Ore. Code (1935 Supp.), sec. 69–702; S. D. Code (1939), sec. 57.1028.) To give priority to claims for state taxes out of property subject to a specific lien would not be in conflict with section 3466, since the priority granted by section 3466 extends only to the property belonging to the debtor at the time of the insolvency proceeding and the debtor's property may properly be regarded as limited to his equity. See Brief for the United States in *United States* v. *Texas*, No. 44, this Term; See *Spokane County* v. *United States*, *supra*, at 91; *Blair*, The Priority of the United States in Equity Receiverships, 39 Harv. L. Rev. 1, 29–30; cf. *New York* v. *Maclay*, 288 U. S. 291, 292–293. In this view, it is a matter of indifference to the United States to whom the property interest of the mortgagee is awarded, since in no event can the United States share in that interest. The priority granted to wage earners, however, is based on considerations of policy and applies even though the property belong to the debtor at the time of the commencement of the proceedings, and it could not have been intended that the wage earner priority would be enforced where the beneficiary would be the state and not the wage earner.

as possible solutions of the circuity of lien problem (see *Benson*, Circuity of Lien—A Problem in Priorities, 19 Minn. L. Rev. 139; A First Rate Legal Puzzle—A Problem in Priorities, 29 Ill. L. Rev. 952) are relevant, since the priority accorded wage earners under the Bankruptcy Act was intended for the benefit of wage earners only and it cannot therefore be made the basis of preferring claimants other than wage earners at the expense of the United States.

The decision below presents other difficulties. Section 64a places the claims of the United States other than for taxes and the claims of landlords for one year's rent on a parity, both below labor claims. Some state statutes, however, give landlord claims first preference. See Code of Md. Ann. (1935 Supp.), art. 47, sec. 15A; N. J. Gen. Stat. (1789–1895), p. 79; Penna. Stat. Ann. (Purdon 1930), tit. 39, secs. 216, 218. See also Const. of Alabama (1901), sec. 250 (giving holders of bank notes and depositors first priority; Wyo. Comp. Stat. (1920), sec. 5169 (same); Code of S. C. (1932), sec. 8782 (giving judgment against railway for personal injuries and judgment by municipality for injury to streets a first lien and preference over mortgages, etc.). Moreover, the Government's priority would vary in the same state according to the nature of the proceeding, for under the statutes of a number of states the order of priority varies according to whether the proceeding involves a receivership, administration

of decedent's estate, assignment for the benefit of creditors, etc.[14] Such a result is in direct conflict with the express provisions of Revised Statutes, section 3466.

There are other equally compelling considerations which require the rejection of the construction adopted by the court below. At the time the Bankruptcy Act was enacted in 1898 a number of states expressly gave tax and, in some instances, all claims of the United States, first preference after administration expenses, either alone[15] or in conjunction with similar claims of the states.[16] These statutes were certainly not intended to be

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[14] See, e. g., Code of Iowa (1939), secs. 12719, 12731, 12732; Ind. Stat. Ann. (Burns 1933), secs. 6-1301, 40-111; Gen. Stat. of Kans. Ann. (1935), secs. 44-312, 22-701 (*Schmitz* v. *Schmitz*, 124 Kans. 546); Rev. Stat. of Utah Ann. (1933), secs. 102-9-22, 5-40-9; Wis. Stat. (1939), secs. 313.16, 128.17.

[15] *Government Claims Alone First:* Idaho Rev. Stat. (1887), sec. 5606; Acts and Resolves of Mass. (1881), c. 159; Minn. Stat. (1894), sec. 4734; Neb. Comp. Stat. (1895), sec. 2763; Laws of Nev. (1897), c. 106, sec. 195; N. H. Pub. Stat. (1891), c. 201, sec. 32; Rev. Stat. Ohio (1890), sec. 6090; R. I. General Laws (1896), c. 215, sec. 16, c. 274, secs. 27, 58; Va. Code (1887), sec. 2660; W. Va. Code (1891), c. 85, sec. 25; Wis. Stat. (Sanborn & Berryman, 1898), sec. 3852.

[16] *Government and State Claims on a Parity Ahead of Wages:* General Stat. of Conn. (1888), secs. 532, 575; Code of Ga. (1895), secs. 3234, 2792, 2793; Me. Rev. Stat. (1883), c. 70, sec. 40; Mass. Gen. Stat. (2d ed. 1860), c. 118, sec. 96; Ann. Stat. of Mich. (Howell, 1882), sec. 8749 L; Minn. Stat. (1894), secs. 4231, 4529; N. H. Pub. Stat. (1891), c. 201, sec. 32; Rev. Code of N. D. (1895), sec. 6070; Rev. Stat. of Ohio (1890), sec. 6355; Utah Rev. Stat. (1898), sec. 3870; Vt. Stat. (1894), sec. 2503; Wis. Stat. (Sanborn & Berryman, 1898), sec. 1700.

"amended" by the Bankruptcy Act and they cannot be enforced in accordance with the supposed policy of section 64a without amendment by the state legislatures.

It is true that the difficulties suggested do not arise in this case. But it cannot seriously be suggested that Congress by mere implication intended in 64a to repeal Revised Statutes, section 3466, to the extent that the provisions of a particular state statute permits the application of the priority provisions of section 64a in conformity with the purpose of that section. Uniformity is the principle of the Bankruptcy Act and section 3466 alike.

Congress manifested its understanding that section 3466, was unaffected by the Bankruptcy Act in nonbankruptcy proceedings when it amended the latter legislation in the Act of May 27, 1926, 44 Stat. 662, 667, following this Court's decision in *Davis* v. *Pringle*, 268 U. S. 315. In the *Davis* case this Court had held that the United States was not a "person" within the meaning of the then section 64 (b) (5), the effect of the decision being to limit the United States priority to that expressly granted for taxes in the preceding subdivision (a). If the decision below is correct, the Bankruptcy Act of 1898, as construed in the *Davis* case, repealed Revised Statutes, section 3466, *pro tanto*. The Congress evi-

dently thought otherwise, however, for it undertook to secure the priority given by section 3466 to nontax claims merely by defining "person" to include the United States. The conclusion is the same even if the 1926 Act be viewed as a construction of the original enactment and a disapproval of the *Davis* decision. Cf. *United States* v. *Hutcheson*, 312 U. S. 219. In this view, the then paragraph (b) (5) of section 64 must be construed as though it had always been intended to include the United States. Viewed in this light, section 64 reflected the intention of Congress not to modify section 3466 in nonbankruptcy proceedings. For, as so construed, it made explicit reference to section 3466 but omitted any provision limiting its application in nonbankruptcy proceedings, a sufficient indication that the omission was deliberate. Moreover, the language of the then subdivision (b) (5) "debts owing to any person who by the laws of the States or the United States is entitled to priority," clearly has reference to the priority accorded by such laws independently of the Bankruptcy Act, thus indicating that Congress had no intention of modifying those laws in nonbankruptcy proceedings, although their enforcement in bankruptcy was necessarily limited by other provisions of section 64. This is certainly true as to the state laws referred to and it would be highly artificial to impute to Congress

a different intention as to the federal law, section 3466.[19]

Where Congress has intended to extend the priority provisions of the bankruptcy laws to non-bankruptcy it has expressly so provided.[20] Several bills have been introduced for the purpose of extending the priority awarded wage claims by

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[19] The legislative history of the 1926 act is not illuminating. See S. Rept. No. 406, 69th Cong., 1st Sess.; H. Rept. No. 877, 69th Cong., 1st sess.

The states likewise have legislated on the assumption that the priority given the United States by section 64a is not controlling in nonbankruptcy proceedings. Many state statutes of relatively recent date expressly give first preference, after administration expenses, to tax, or in some instances, to all claims of the United States, either alone (California Probate Code (1937), sec. 950; Code of Iowa (1939), sec. 12719; Rev. Stat. of Me. (1930), c. 79, sec. 1; 6 Ann. Laws of Mass. (1933), c. 198, sec. 1, c. 216, sec. 118; Minn. Stat. (Mason, 1927), secs. 8992–108, 8827; Neb. Comp. Stat. (1929), sec. 30–615; Nevada Comp. Laws (1929), sec. 9795; Consol. Laws of N. Y. (Cahill, 1930), c. 12, sec. 188; Ohio Gen. Code Ann. (Page, 1937), sec. 10509–121; Gen. Laws of R. I. (1938), c. 578, sec. 33; Va. Code Ann. (1936), sec. 5390; W. Va. Code Ann. (1937), sec. 4167) or in conjunction with like claims of the states (Conn. Gen. Stat. (1930), secs. 4870, 4971; Ga. Code Ann. (1936), sec. 113–1508; 7 Ann. Laws of Mass. (1933), c. 216, sec. 118; Minn. Stat. (Mason, 1927), sec. 9789; Public Laws of N. H. (1926), c. 401, sec. 31, c. 303, sec. 22; N. D. Comp. Laws (1913), sec. 8417; N. M. Stat. Ann. (1915), sec. 2284; Okla. Laws, 1927, c. 106, sec. 1; Tenn. Code (Williams, 1934), sec. 8286; Wis. Stat. (1939), sec. 313.06).

[20] The provisions of section 77n of the Bankruptcy Act giving claims for personal injuries to employees of railroads a preferred status were expressly extended to equity receivership by the Act of August 11, 1939, 53 Stat. 1406.

section 64a to proceedings outside of bankruptcy (H. R. 2672, 77th Cong., 1st sess.; H. R. 992, 76th Cong., 1st sess.; H. R. 6557, 75th Cong., 1st sess.) but have all failed of enactment. The introduction of such proposals is persuasive of a prevailing understanding that legislation is required to accomplish the desired result, and the failure of Congress to enact the suggested amendment is likewise evidence that Congress is unwilling to modify the priority accorded the United States in nonbankruptcy proceedings under Revised Statutes, section 3466.

No clearer case could be imagined for the application of the rule that "repeals by implication are not favored." *United States* v. *Borden Co.*, 308 U. S. 188, 198–199. The rule has not been modified by the decision in *United States* v. *Hutcheson*, 312 U. S. 219. In that case the Court held that Congress in the Norris-LaGuardia Act had "placed its own meaning" upon section 20 of the Clayton Act and that the Court was bound by that construction regardless of its prior decisions on the same question. In this case, however, there is no suggestion that section 64a of the Bankruptcy Act was in any sense a construction of the original meaning of Revised Statutes, section 3466, or a "disapproval" of the Court's decisions construing the earlier enactment. Cf. *United States* v. *Hutcheson*, *supra*, at 236. The sole question is whether by mere implication the Congress in-

tended to repeal the section 3466 *pro tanto*. The question should be answered in the negative on the basis of settled canons of construction alone. Any doubt should be dispelled, however, by the affirmative manifestations of a congressional intention to limit the effect of section 64a to proceedings in bankruptcy in accordance with its express provisions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

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OCTOBER 1941.

APPENDIX

Section 3466 of the Revised Statutes (31 U. S. C., sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 64 of the Bankruptcy Act, as amended (11 U. S. C., Supp. V, sec. 104):

> a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the rea-

sonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this title, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And*

provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [So in original. Probably should read "is".] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

b. Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be.

Mo. Rev. Stats. (1929), Sec. 1168:

SEC. 1168. *Employes and laborers preferred creditors.*—Hereafter when the property of any company, corporation, firm or persons shall be seized upon by any process of any court of this state, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such prop-

erty, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs. Any such laborer or servant desiring to enforce his or her claim for wages under this article shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: *Provided*, that any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid.

SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1941.

The United States of America, Petitioner, vs. Harry S. Emory, St. James Distillery, Inc., and St. James Distillery, Respondents.	On Writ of Certiorari to the Springfield Court of Appeals, State of Missouri.

[December 15, 1941.]

Mr. Justice Byrnes delivered the opinion of the Court.

This case involves the application of § 3466 of the Revised Statutes to a claim of the United States under the National Housing Act in an equity receivership proceeding in a state court.

The St. James Distillery, a corporation, executed a note to the Industrial Bank and Trust Company of St. Louis on September 23, 1935. On July 14, 1936 the Bank endorsed the note and delivered it to the Federal Housing Administration, acting on behalf of the United States, under a contract of insurance and guaranty provided for in Title I of the National Housing Act. The United States, through the Federal Housing Administration, on that date reimbursed the Bank in the amount of $5988.88, the balance due on the note. Emory, claiming wages due him, filed a petition on August 27, 1936 in the Circuit Court of Phelps County, Missouri, alleging that the St. James Distillery was hopelessly insolvent and praying that a receiver be appointed. On September 9 the Circuit Court found all the issues in Emory's favor and appointed a receiver who took possession of the corporate assets.

After deductions for the costs of the receivership, the assets available for distribution totaled $678. Against this amount the wage claims of "about twelve individuals" were filed. The separate amounts of these claims were neither stipulated nor determined by the courts below; their aggregate was "about $900". The United States, on behalf of the Federal Housing Administration, filed a claim for the $5988.88 due on the note. The wage

claimants asserted priority under § 1168 of the Revised Statutes of Missouri;[1] the United States asserted priority under § 3466 of the Revised Statutes of the United States.[2]

The Circuit Court of Phelps County decided that the claim of the United States should be treated as an ordinary claim against the estate, and that the wage claims should be paid first. On appeal, the Springfield Court of Appeals held that the claim of the United States on behalf of the Federal Housing Administration was accorded preference over ordinary claims by § 3466 of the Revised Statutes of the United States. Consequently, it was of the opinion that the Circuit Court had erred in treating the claim of the United States as an ordinary claim. However, it held further that the error was of no consequence, since the Missouri statute granted priority to wage claims even over other preferred claims and no assets would remain after they had been satisfied. Rehearing was denied, and the Supreme Court of Missouri denied a petition for certiorari. We granted certiorari because of the importance of the question and because of an asserted conflict of decisions.

The applicability of § 3466 to this case is clear. The section applies in terms to cases "[1] in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or [2] in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, . . . [or] [3] in which an act of bankruptcy is committed." This case falls within the third category. It is agreed that the St. James Distillery was insolvent "on or before August 1936" and that in response to a creditor's petition a receiver was appointed to liquidate the cor-

[1] Mo. Rev. Stat. (1929) § 1168, so far as pertinent, provides: "Hereafter when the property of any company, corporation, firm or person shall be seized upon by any process or any court of this state, or when their business shall be . . . put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such property, shall be first paid in full; and if there be not sufficient to pay them in full then the same shall be paid to them pro rata, after paying the costs."

[2] U. S. Rev. Stat. § 3466 (U. S. C., Title 31, Section 191) provides: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

porate assets. The appointment of a receiver under such circumstances is among the most common examples of an "act of bankruptcy". *Cf.* § 3(a)(1) of the Bankruptcy Act, U. S. C., Title 11, § 21(a)(4).

Just such proceedings as this, therefore, are governed by the plain command of § 3466 that "debts due to the United States shall be first satisfied." The purpose of this section is "to secure adequate public revenues to sustain the public burden" (*United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35), and it is to be construed liberally in order to effectuate that purpose (*Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 487). In view of this language, purpose, and rule of construction, the priority asserted here by the United States appears to be securely established.

The court below, however, held otherwise. In granting priority to the wage claims over that of the United States, it relied upon Missouri law. It recognized, as the authorities obliged it to recognize,[3] that the state statute could not prevail if it was in conflict with § 3466. But it decided that no such conflict arose, for the reason that § 3466 had been impliedly modified by § 64a of the Bankruptcy Act,[4] which, like the Missouri statute, requires that wage claims be satisfied before those of the United States.

The judgment below must have rested upon either of the following theories: that Congress intended by § 64a of the Bankruptcy Act to subordinate claims of the United States to wage claims in non-bankruptcy proceedings generally; or that Congress intended by § 64a to modify § 3466 only so far as to grant priority over the United States to wage claimants in state non-bankruptcy proceed-

[3] Field *v.* United States, 9 Pet. 182, 200; United States *v.* Oklahoma, 261 U. S. 253; Barnett *v.* American Surety Company of New York, 77 F. 2d 225; In re Dickson's Estate, 197 Wash. 145, 154-155. Cf. United States *v.* Summerlin, 310 U. S. 414.

[4] Section 64(a) of the Bankruptcy Act, so far as pertinent, provides: "The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estate, and the order of payment, shall be (1) . . . [costs of preserving the estate, etc.]; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) . . . [certain expenses of creditors connected with the liquidation of the estate]; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . . ; and (5) debts owing to any person, including the United States, who by the laws of the United States in [is?] entitled to priority . . . ."

ings when they would be entitled to such priority by otherwise applicable state law.

There is a difficulty common to both theories which we regard as insurmountable. Neither the language of § 64a nor the Congressional history of the legislation here involved supports the proposition that § 64a was intended to eliminate, either partially or wholly, the priority of claims of the United States in non-bankruptcy proceedings.

The provisions of § 3466 have been in force since 1797, without significant modification. 1 Stat. 515. The first three federal bankruptcy acts[5] specifically preserved the priority of the United States over all other claimants in bankruptcy proceedings in the federal courts. Section 64 of the Bankruptcy Act of 1898,[6] however, disturbed this state of affairs. It provided an order of distribution of the assets of bankrupt estates in which certain wage claims preceded non-tax claims of the United States. While § 64 has been altered since 1898 in several particulars, the priority of wage claims over non-tax claims of the United States has continued. Consequently, we must look to the Act of 1898 for evidence that the priority accorded to wage claims by § 64 was intended to apply to more than bankruptcy proceedings in the federal courts.

We find no such evidence. The entire Act of 1898, as §2 in particular plainly reveals, was designed to create federal courts of bankruptcy and to define their functions. Indeed, § 64 itself, in subdivision (a), refers to the "court"; § 1 provides that, as used in the Act, "court" means "the court of bankruptcy in which the proceedings are pending"; and § 1 also provides that "courts of bankruptcy", as used in the Act, mean the federal district courts and a

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[5] Act of 1800, c. 19, § 62, 2 Stat. 19; Act of 1841, c. 9, § 5, 5 Stat. 441; Act of 1867, c. 176, §28, 14 Stat. 517.

[6] Section 64 of the Bankruptcy Act of 1898 (30 Stat 544) provided:

"(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof . . . .

"(b) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) . . . [the costs of administration]; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority."

few other federal courts. There is no internal sign that any part of § 64 was intended to apply to state courts or to non-bankruptcy proceedings in the federal courts. We have looked in vain in the committee reports and the debate upon the bill for any external hint of such an intention.

It is not strange, therefore, that both courts and commentators have assumed that the application of § 64 of the Act of 1898 was limited to federal bankruptcy proceedings, and that the priority of claims of the United States in non-bankruptcy proceedings remained unaffected. *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *United States* v. *Butterworth-Judson*, 269 U. S. 504; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238-239; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290. See Rogge, *The Differences in Priority of the United States in Bankruptcy and in Equity Receiverships*, 43 Harv. L. Rev. 251; Blair, *The Priority of the United States in Equity Receiverships*, 39 Harv. L. Rev. 1. We are aware of but a single case in which an appellate court has specifically passed upon the contention that the priority granted to the United States in non-bankruptcy proceedings by § 3466 has been modified by § 64 of the Bankruptcy Act. And in that case, the contention was rejected. *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221.[7]

While the point was not discussed in the courts below, it is now urged that the objectives and provisions of the National Housing Act require us to hold that claims of the United States arising under it are not entitled to the priority awarded by § 3466. We are aware of no canon of statutory construction compelling us to hold that the word "first" in a 150 year old statute means "second" or "third", unless Congress later has said so or implied it unmistakably.

Certainly there is no provision in the National Housing Act expressly relinquishing the priority of the United States with respect to claims arising under it. At best, therefore, such an intention on the part of Congress must be found in some patent inconsistency between the purposes of the Housing Act and § 3466. The plain objective of the Housing Act was to stimulate the building trades and to increase employment. In order to induce banks and other

[7] A similar contention with respect to § 57j of the Bankruptcy Act was rejected in *In re Assignment for Benefit of Creditors of T. J. Simpson, Inc.*, 15 N. Y. S. 2d 1021.

lending institutions to get the program under way. Congress promised that the United States would make good up to 20% on the losses they might incur on such loans.[8] As between the government and the lending institutions, it was clearly intended that the United States should bear the losses resulting from defaults. But beyond this we may not go. There is nothing to show a further intention that the United States should relinquish its priority as to claims against defaulting and insolvent borrowers whose notes it takes up from the lending institution pursuant to the insurance contract. That is, the ultimate collection of bad loans was consigned to the United States rather than to the lending institutions, but the collecting power of the United States was neither abridged nor qualified.[9]

We are told, however, that the broad purposes of the Act would be thwarted if we failed to assume that Congress intended to surrender this priority. The reason advanced is that suppliers of goods and services would refuse to extend credit to those desiring to make property improvements if they knew that in the event of insolvency their claims would be subordinated to those of the United States. The fatal weakness of this contention is that the Federal Housing Administration imposes an ironclad requirement that the proceeds of insured loans be used for no purpose other than the improvements described in the application for the loan.[10] Indeed, lending institutions frequently pay the proceeds of the loan directly to the suppliers of goods and services rather than to the property owner, and the practice has met with the enthusiastic approval of the Administration.[11]

Consequently, the argument against the application of § 3466 is reduced to this: Private persons in general are reluctant to extend credit when they know that in the event of the borrower's

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[8] 48 Stat. 1246, c. 847, § 2.

[9] The priority granted by § 3466 is, of course, no guaranty that the United States will be saved from loss. In the instant case, for example, the assets available for distribution are so small that the United States will lose heavily even if its claim is first satisfied.

[10] "Modernization Credit Plan," Bulletin No. 1 (Aug. 10, 1934) pp. 15, 16-17; *id.* (Sept. 12, 1934 revision) p. 22; *id.* (July 15, 1935, revision) p. 19; *id.* (July 20, 1936 revision) pp. 6-7; "Property Improvement Loans Under Title I" (Feb. 4, 1938) pp. 4, 23; *id.* (July 1, 1939 revision) p. 15; *id.* (March 15, 1940 revision) p. 10.

[11] "Modernization Credit Plan," Bulletin No. 1 (Sept. 12, 1934 revision) p. 29; *id.* (July 15, 1935 revision) p. 15; "Property Improvement Loans Under Title I" (Feb. 4, 1938) p. 33; *id.* (July 1, 1939 revision) p. 30; *id.* (March 15, 1940 revision) regulation No. VIII.

insolvency the claims of the United States will receive priority, and this circumstance is particularly undesirable in times of economic stress. In the first place, whatever may be the merits of the contention, it should be addressed to Congress and not to this Court. In the second place, the argument proves too much. If it is sound as applied to this kind of a claim of the United States, it is equally sound as applied to all claims as to which the United States asserts priority under § 3466.

Neither *Cook County National Bank* v. *United States*, 107 U. S. 445, nor *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, requires a different conclusion. In the former case, the United States was denied its § 3466 priority in connection with a claim against a national bank for the amount of certain funds of the United States deposited with it. The decision was based on two grounds. First, the national banking Act undertook to provide a complete system for the establishment and government of banks, and it included specific provisions concerning the distribution of the assets of insolvent banks which were plainly inconsistent with the granting of priority to general claims of the United States. Second, the national banking Act expressly authorized the Secretary of the Treasury to require national banks accepting deposits of federal funds to give satisfactory security; it was held to be fairly inferable that Congress intended the United States to look to this provision rather than to § 3466 for protection.

The claims which were denied priority in the *Guaranty Trust* case arose under Title II of the Transportation Act of 1920. That Act provided for the funding of debts to the United States which the railroads had contracted during the period of wartime control, and also provided for new loans to the railroads. In holding § 3466 inapplicable to the collection of these loans the Court emphasized that the basic purpose of the Act was to promote the general credit status of the railroads, that the railroads were required to furnish adequate security for the payment of both the old and new loans, and that the interest rate of 6% on one class of loans was "much greater than that which ordinarily accompanies even a business loan carrying such assurance of repayment as would have resulted from an application of the priority rule." 280 U. S. at 486. These factors persuaded the Court that Congress had intended to exclude these loans from the scope of § 3466.

In the instant case none of these circumstances is present. The National Housing Act contains no reference to the liquidation of estates of insolvent borrowers, and consequently no direct inconsistency with § 3466 is possible. The purpose of Title I was not the strengthening of the *general* credit of property owners, but the stimulation of the building trades by affording assurances to lending institutions in order to induce them to make loans for property improvements. No security was required of the borrowers, and the interest charge was low.[12] Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of § 3466. We think such inconsistency is wholly wanting here.

Section 3466 is applicable to this proceeding, and it requires that the claim of the United States be first satisfied.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[12] Not until 1939, four years after the note in this case was executed, did the Federal Housing Administration even require the lending institutions to pay premiums for the insurance of Title I loans. 53 Stat. 805, c. 175, § 2. The income from these premiums was to be used primarily to meet operating expenses under Title I and secondarily to meet losses resulting from defaults. In his report dated April 1, 1941, the Administrator estimated that for the fiscal year ending June 30, 1941 this income from premiums would prove sufficient to reimburse the United States for less than half its losses under Title I, and that $4,000,000 of public funds would be required to meet the balance. Report of the Federal Housing Administration for the year ending Dec. 31, 1940, p. 11.

SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1941.

The United States of America, Petitioner, *vs.* Harry S. Emory, St. James Distillery, Inc., and St. James Distillery.	On Writ of Certiorari to the Springfield Court of Appeals, State of Missouri.

[December 15, 1941.]

Mr. Justice Reed, dissenting.

The purpose and provisions of the National Housing Act[1] lead me to the conclusion that § 3466 of the Revised Statutes is inapplicable to the claim of the Administrator in this case.[2]

A statute is not to be interpreted by its text alone, as though it were a specimen under laboratory control. It takes meaning from

[1] Act of June 27, 1934, c. 847, Tit. I, § 2, 48 Stat. 1246, as amended 49 Stat. 299, 49 Stat. 722, 49 Stat. 1187, 49 Stat. 1234. The statute as thereafter amended subsequent to the events of this case may be found as 12 U. S. C. § 1703 (1940).

[2] Previous decisions in other courts concededly are to the contrary. In re Long Island Sash & Door Corp., 259 App. Div. 688, 20 N. Y. S. 2d 573, aff'd mem. 284 N. Y. 713, 31 N. E. 2d 48, cert. den. 312 U. S. 696; In re Dickson's Estate, 197 Wash. 145, 84 P. 2d 661. Accord, Korman v. Federal Housing Administrator, 113 F. 2d 743 (App. D. C.); Wagner v. McDonald, 96 F. 2d 273 (C. C. A. 8th); In re Weil, 39 F. Supp. 618 (M. D. Pa.); In re Wilson, 23 F. Supp. 236 (N. D. Tex.); cf. Federal Reserve Bank of Dallas v. Smylie, 134 S. W. 2d 838 (Tex. Civ. App.) (Farm Credit Administration); see 52 Harv. L. Rev. 320. United States v. Summerlin, 310 U. S. 414, held only that the claim assigned to the administrator became a claim of the United States not subject to a state statute of "non-claim". It did not pass upon the right to priority under § 3466 in the decedent's estate. Compare Dupont De Nemours & Co. v. Davis, 264 U. S. 456, where the Director General of the railroads was held free from limitation, with Mellon v. Michigan Trust Co., 271 U. S. 236, where the Director General was denied priority under § 3466. United States v. Marxen, 307 U. S. 200, 203, expressly did not decide the point.

other enactments forming the whole body of law bearing upon its subject.[3] If, like § 3466, it has been upon the books for years, the precedents interpreting its meaning must be considered in connection with it, particularly when, as here, new legislation is passed which may be inconsistent with its application.[4]

From past interpretation we learn that the traditional function of § 3466 is the assurance of the public revenue,[5] whatever may be the expense to the competing creditors. Their interests are subordinated to the general advantage.[6] Title I of the National Housing Act, however, is not a revenue measure—it was intended to stimulate recovery and employment in the construction industries and to enable property-owners to obtain funds for sorely needed repairs by insuring financial institutions against loss on loans for such work.[7] This was accomplished by what is in effect a guarantee that all losses on rehabilitation loans up to a predetermined percentage (20% here) of the total made by the financial institution would be borne by the United States, either by taking over loans in default or paying the deficit.[8] That loss Congress intended the government to bear.[9] In estimating the loss it relied upon the experience of pri-

[3] Keifer & Keifer *v.* R. F. C., 306 U. S. 381, 389.

[4] United States *v.* Marxen, 307 U. S. 200, 206; United States *v.* Knott, 298 U. S. 544, 547-48; Mellon *v.* Michigan Trust Co., 271 U. S. 236, 240.

[5] Spokane County *v.* United States, 279 U. S. 80, 92; Price *v.* United States, 269 U. S. 492, 500; Bramwell *v.* U. S. Fidelity Co., 269 U. S. 483, 487.

[6] United States *v.* Fisher, 2 Cranch 358, 389.

[7] Message of the President, May 14, 1934, 78 Cong. Rec. 8739-40 (Senate), *id.* at 8773-74 (House). Concerning the doldrums of the construction industry, see 78 Cong. Rec. 11194, 11198, 11210, 11211; Hearings on Sen. 3603, Committee on Banking and Currency, 73d Cong., 2d Sess., May 16-24, 1934, pp. 166 ff. Concerning the need for repairs, see 78 Cong. Rec. 11194, 11214; Hearings on Sen. 3603, *supra*, at pp. 36, 48, 288, 290.

[8] Regulation No. 18—Modernization Credit Plan—Title I, National Housing Act, provided: "The Federal Housing Administration will reimburse any insured institution on losses up to a total aggregate amount equal to 20% of the total face amount of all qualified notes taken or current face value of notes purchased by the financial institution, during the time the insurance contract is in force, and held by it or on which it continues liable. . . ." Modernization Credit Plan, Bulletin No. 1, p. 20 (revised reissue, Dec. 10, 1934).

[9] Senator Bulkley, chairman of the subcommittee (78 Cong. Rec. 11974) stated to the Senate: "It is contemplated that there will be a loss to the Government under this title, but that probably the loss will not be very great. . . . The reason we justify this provision is that it will make possible a considerable expenditure of money on needed repairs and renovation and thereby stimulate business in trades which very much need stimulation at this time." 78 Cong. Rec. 11981, 73d Cong., 2d Sess.

vate companies which were unaided by any such priority as § 3466.[10] Loans could not be made for a longer term than five years and many would be for less. Stable economic improvement was hardly to be expected within that time, and yet many of those who borrowed would die, or default, and undergo some sort of financial liquidation. The enforcement of § 3466 under those circumstances would shift the loss from the government to competing creditors, thus hampering the efforts of private business and capital to achieve that economic recovery which was the aim of the legislation.[11]

Nothing in the hearings, the debates or the Act show definitively that Congress considered the application of § 3466 to government claims under the National Housing Act. If the two acts alone were to be appraised, it might well be concluded that as they are not necessarily inconsistent, both should be enforced. But the determination of Congressional purpose is not so simple as that. Upon the assumption that the applicability of § 3466 never came to the attention of Congress, we must find legislative purpose not from the language of the two Acts alone but from generalizations as to the object of the new statute and from judicial interpretations of the meaning of the old. To reach a sound conclusion as to the applicability of the priority statute and the purpose of Congress deduced merely from the state of the law at the time of the enactment of the Housing Act, we need to weigh the precedents under § 3466 quite as carefully as the Acts themselves, in order to develop the legal situation into which the Housing Act was injected. When this is done, it is apparent that each time this Court has considered legislative purpose as to § 3466 in relation to government claims under public financial legislation affecting creditors competing with the Government, it has determined § 3466 did not apply.[12]

The National Housing Act was "one of the latest of a series of enactments, extending over more than a century, through which the

[10] 78 Cong. Rec. 11195-11196, 11981, 11982, 73d Cong., 2d Sess. See Hearings on Sen. 3603, *supra*, at pp. 293-94.

[11] These loans were to be so-called "character" loans, in reliance on the character and stable earnings of the borrower. 78 Cong. Rec. 11194, 11195, 11981. It was expected that while many persons at the time had no stable income, the Act would temporarily promote new employment which once under way was hoped would continue long enough of its own force to culminate in permanent business recovery and repayment of the borrowed money. Hearings on Sen. 3603, *supra*, at pp. 46, 173.

[12] Cook County Nat. Bank *v.* United States, 107 U. S. 445; United States *v.* Guaranty Tr. Co., 280 U. S. 478; cf. Sloan Shipyards *v.* U. S. Fleet Corp., 258 U. S. 549; Mellon *v.* Michigan Trust Co., 271 U. S. 236.

Federal Government has recognized and fulfilled its obligation to provide a national system of financial institutions. . . .'"[13] Section 3466 is inconsistent with this purpose.[14] It is not significant that in the case of Cook County National Bank the debtor bank against which priority was denied was in the federal financial system, while here the debtor is a private corporation which has participated in a federal financing plan. The intrusion of a novel priority, uncertain in amount because unrecorded, into the intricate credit system of the nation at a time of strain, would be a drag on recovery rather than a stimulus. Suppliers of goods or services in all fields of credit activity would be moved to constrict their advances to a borrower known to have created a secret but valid lien upon his assets superior to all general creditors. The full reach of the implication of credit dislocation may be readily gauged by the fact that at the end of 1936, 1,326,102 separate rehabilitation loans had been made under Title I for an aggregate amount of $500,220,642.[15] Possible priorities will now exist for every outstanding dollar.

The facts of this case show how government aid to a debtor may be a snare for his other creditors if the priority statute operates in this class of claims. About a dozen claimants became creditors in the aggregate amount of some nine hundred dollars for labor. Such labor claims were entitled to the preference under Missouri law common to labor claims. But for the priority of the government's claim, they would receive all of the realization from the assets—about two-thirds of their claims. But a month before the appointment of the receiver the Federal Housing Administration took over from a bank a note of about $6000. From a deferred position in the hands of the bank this debt is said to have stepped into a preferred position by transfer to the government agency. As such it absorbs all of the assets, and the laborers who trusted their employer's credit get nothing. Such a preference of creditors, brought about by the debtor, would be an act of bankruptcy.

In 1920 when the railroads needed funds but lacked credit for private borrowing, government loans were authorized by Congress

[13] Validity of Certain Provisions of the National Housing Act, 38 Ops. Atty. Gen. 258, 262.

[14] Cook County Nat. Bank v. United States, 107 U. S. 445.

[15] Third Annual Report of the Federal Housing Administration, House Doc. No. 48, 75th Cong., 1st Sess., p. 7.

based upon such prospective earning power and security as would furnish reasonable assurance of repayment.[16] In *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, we held that the rehabilitating functions and the security provisions of the Transportation Act of 1920 were so inconsistent with § 3466 as to preclude its application in the receivership of a debtor railroad. Even more inconsistent considerations exist in this case. Congress was confronted with widespread need of repairs on property owned by persons without the cash or credit to secure them.[17] Moreover, not only homeowners but, like the railroads, hard pressed business establishments such as the distillery in this case were to be assisted in securing modernization loans.[18] Instead of lending these people federal funds, Congress lent them federal credit on which to borrow private funds, with the evident purpose of keeping the program as much as possible a matter of private enterprise handled in the course of private affairs. Assurance of repayment was rested not on a combination of security and earning power but deliberately upon earning power alone.[19] Whereas with the railroads interest corresponding to the risk was charged, no premium was charged for the insurance of loans under Title I, with the expectation that the government would pay the loss as its contribution to recovery.[20] The declared purpose of the United States to absorb the losses of the lenders is clearly inconsistent with the priority over other creditors given by § 3466. It seems beyond doubt to me that Congress did not expect a priority under Title I which the *Guaranty Trust* case certainly denied it under Title II relating to insured mortgages.[21]

Even in the mechanics of its operation Title I repudiated the benefits of § 3466. Collection was left to the financial institution

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[16] Transportation Act of 1920, § 210, 41 Stat. 468.

[17] 78 Cong. Rec. 11199, 11388, 11981, 73d Cong., 2d Sess.; Hearings on Sen. 3603, *supra*, at pp. 30, 172, 174, 179.

[18] The loan limit of Title I was soon increased to meet business needs. Amendment of May 28, 1935, 49 Stat. 299.

[19] 78 Cong. Rec. 11194, 11195, 11981, 11982, 73d Cong., 2d Sess.; Hearings on Sen. 3603, *supra*, at pp. 37, 39, 293.

[20] Senator Bulkley stated: "The lender receives 20 percent insurance automatically as an inducement to make loans of this particular character. Frankly it is contemplated that the Government will lose some money." 78 Cong. Rec. 11982, 73d Cong., 2d Sess. See also 78 Cong. Rec. 11195; Hearings on Sen. 3603, *supra*, at p. 34-35.

[21] Moreover, since July 1, 1939, there is a .75% insurance charge under Title I, so that in the future, whatever the decision here, even Title I would seem to be governed by the Guaranty Trust case. 24 C. F. R. § 501.18 (Supp. 1939).

after default so long as there was hope of partial liquidation.[22] The lender, of course, had no priority.

The judgment should be affirmed on the ground that no priority exists by virtue of § 3466.

Mr. Justice ROBERTS, Mr. Justice DOUGLAS and Mr. Justice JACKSON concur in this dissent.

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[22] Modernization Credit Plan, Bulletin No. 1, *supra*, at p. 8 states: "It is to the interest of the financial institution to carry the collection process on a defaulted note as far as there is reasonable prospect of ultimate payment inasmuch as complete reimbursement for any expenses incurred is provided as specified hereinafter. This policy will tend to conserve the insurance reserve of 20% for possible later losses and also will maintain the understanding of the local community that these notes require the same prompt handling by makers as any other credit obligation. . . . it is the policy of the Federal Housing Administration to permit financial institutions every possible latitude in making collections on delinquent items. It is only after it clearly appears that further collection efforts will be fruitless that the Federal Housing Administration will insist that claims be made. Financial institutions are, therefore, given a full year after default on the note to effect collection. . . . If 10% of the amount due on the note is collected within the first year after default on the note and so long thereafter as 5% at least is collected in each six-month period, the Federal Housing Administration will not require that claim be made, but will permit the financial institution to proceed with its collection efforts. Claims may include: (1) Net unpaid principal; (2) uncollected earned interest (after maturity interest is not to be claimed at a rate exceeding 6% per annum); (3) uncollected "late charges"; (4) uncollected court costs, including fees paid for issuing, serving and filing summons; (5) attorney's fees not exceeding 15% of the amount collected on the defaulted note; (6) handling fee of $5 for each note, if judgment is secured, plus 5% of amount collected subsequent to return of unsatisfied property execution."